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ILLEGAL IMMIGRANTS (TRAFFICKING) ACT, 2000

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[No. 29.] *Illegal Immigrants (Trafficking) Act, 2000.* [2000.]

Acts Referred to

Bail Act, 1997	1997, No. 16
Civil Service Commissioners Act, 1956	1956, No. 46
Consumer Credit Act, 1995	1995, No. 24
Criminal Law Act, 1976	1976, No. 32
Firearms and Offensive Weapons Act, 1990	1990, No. 12
Immigration Act, 1999	1999, No. 22
Refugee Act, 1996	1996, No. 17
Road Traffic Act, 1961	1961, No. 24
Road Traffic (Amendment) Act, 1984	1984, No. 16



Number 29 of 2000

ILLEGAL IMMIGRANTS (TRAFFICKING) ACT, 2000

AN ACT TO PROHIBIT TRAFFICKING IN ILLEGAL IMMIGRANTS AND TO AMEND THE REFUGEE ACT, 1996, AND THE IMMIGRATION ACT, 1999, AND TO PROVIDE FOR RELATED MATTERS. [28th August, 2000]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act, except where the context otherwise requires— Interpretation.

“illegal immigrant” means a non-national who enters or seeks to enter or has entered the State unlawfully;

“Minister” means the Minister for Justice, Equality and Law Reform;

“vehicle” includes any ship, boat, aircraft or mechanically propelled vehicle within the meaning of the Road Traffic Act, 1961.

(2) In this Act—

- (a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other provision is intended,
- (b) a reference to a paragraph or subparagraph is a reference to a paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and
- (c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

2.—(1) A person who organises or knowingly facilitates the entry into the State of a person whom he or she knows or has reasonable cause to believe to be an illegal immigrant or a person who intends to seek asylum shall be guilty of an offence and shall be liable— Trafficking in illegal immigrants.

- (a) on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both,

S.2 (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 10 years or to both.

(2) *Subsection (1)* shall not apply—

(a) to anything done by a person otherwise than for gain, or

(b) to anything done to assist a person seeking asylum by a person in the course of his or her employment by a *bona fide* organisation if the purposes of that organisation include giving assistance to persons seeking asylum.

(3) *Subsection (1)* shall apply to acts done or omissions made outside, as well as to acts done or omissions made, in the State.

Power to detain certain vehicles.

3.—(1) Where a member of the Garda Síochána arrests a person for an offence under *section 2* and a vehicle is suspected of having been used by the person for the purpose of committing or facilitating the commission of the offence, the member may detain the vehicle with its equipment, fittings and furnishings for a period not exceeding 48 hours.

(2) At any time before the expiry of the period referred to in *subsection (1)*, on application to it in that behalf by a member of the Garda Síochána, the Court, if it is satisfied—

(a) that the person referred to in *subsection (1)* has been or is about to be charged with an offence under *section 2*,

(b) that there are reasonable grounds for believing that the vehicle is one which could on conviction on indictment of the person of that offence, and having regard to *subsection (6)* of *section 4*, be the subject of a forfeiture order under *section 4*, and

(c) that there are reasonable grounds for believing that the vehicle would be removed from the State or sold or otherwise disposed of before the determination of the proceedings for that offence,

may make an order authorising the further detention of the vehicle by the Garda Síochána for such period, not exceeding 3 months, as may be specified in the order.

(3) The Court may from time to time, if it is satisfied in relation to the matters referred to in *paragraphs (a), (b) and (c)* of *subsection (2)*, on application to it in that behalf by a member of the Garda Síochána before the expiration of the period specified in an order under this section, make an order authorising the detention of the vehicle by the Garda Síochána for such further period not exceeding 3 months as may be specified in the order.

(4) A vehicle shall not be detained under this section for periods exceeding in total 2 years and the detention of a vehicle under this section shall cease if the proceedings concerned are summary or are discontinued or if the person concerned is acquitted of the charge concerned.

(5) At any time while a vehicle is being detained by virtue of this section, a person specified in *paragraph (a), (b) or (c)* of *section 4(2)* may apply to the Court for its release and the Court may—

- (a) order the release of the vehicle unconditionally if it is satisfied that the matters referred to in *subsection (2)* no longer apply,
 - (b) on such security being given as it considers satisfactory, release the vehicle subject to the condition that it will be delivered up to the Garda Síochána if—
 - (i) the person concerned is convicted of the offence charged, and
 - (ii) an order for its forfeiture is made under *section 4*,
 - (c) order the release of the vehicle subject to such other conditions as it considers appropriate, including a condition that the vehicle is not removed from the State, sold or otherwise disposed of, pending the determination of the proceedings for the offence, or
 - (d) if the vehicle has been detained under this section and subsequently released on the giving of security under *paragraph (b)* and has been sold, destroyed or otherwise disposed of without the leave of the Court, order the forfeiture of the security.
- (6) In this section, “Court” means—
- (a) if the person concerned has not been charged with an offence under *section 2* or if he or she has been so charged and proceedings for the offence have not commenced, the District Court, or
 - (b) if he or she has been so charged and the proceedings concerned have commenced, the court hearing the proceedings.

4.—(1) Where a person is convicted on indictment of an offence under *section 2* and a vehicle was used by the person for the purpose of committing or facilitating the commission of the offence, the court concerned may, in addition to or instead of any penalty that it may impose under *section 2*, order the vehicle with its equipment, fittings and furnishings, or the appropriate share thereof, to be forfeited to the State and may make such other orders as it considers necessary or expedient for the purpose of giving effect to the forfeiture.

Forfeiture of ship, aircraft or other vehicle.

(2) *Subsection (1)* shall not apply to a person unless the person convicted is—

- (a) the owner of, or of a share in, the vehicle concerned, or
- (b) a director or manager of a company which is the owner of, or of a share in, the vehicle concerned, or
- (c) subject to *subsection (3)*, the captain, driver or other person in charge of the vehicle concerned.

(3) In a case where the person convicted is the captain, driver or other person in charge of the vehicle concerned, *subsection (1)* shall not apply unless the persons referred to in *paragraph (a)* or *(b)* knew or could with reasonable diligence have discovered that the vehicle was being used for the purpose of the commission of an offence under *section 2*.

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(4) Whenever an order is made under this section, a member of the Garda Síochána may, for the purpose of giving effect thereto—

- (a) seize and detain the vehicle concerned, and
- (b) do such other things as are authorised by the order or are necessary for the purpose aforesaid.

(5) A court shall not order a vehicle to be forfeited under this section in a case where a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to the person to show cause why the order should not be made.

(6) In considering whether to make an order under this section a court shall have regard—

- (a) to the value of the property, and
- (b) to the likely financial and other effects on the person whose property it is proposed to forfeit of the making of the order (taken together with any other order that the court contemplates making).

(7) A court may, in making an order under this section, include such provisions in that order, or, as the case may require, may make an order supplemental to that order that contains such provisions, as appear to it to be necessary to protect any interest in the property, the subject of the order, of a person other than the person in respect of whom *subsection (1)* applies.

(8) An order under this section shall not take effect until the ordinary time for instituting an appeal against the order or the conviction concerned has expired or, where such an appeal is instituted, until it or any further appeal is finally decided or abandoned or the ordinary time for instituting any further appeal has expired.

(9) In this section, “owner”, in relation to a vehicle which is the subject of a hire-purchase agreement (within the meaning of the Consumer Credit Act, 1995), includes the person in possession of it under that agreement.

Judicial review.

5.—(1) A person shall not question the validity of—

- (a) a notification under section 3(3)(a) of the Immigration Act, 1999,
- (b) a notification under section 3(3)(b)(ii) of the Immigration Act, 1999,
- (c) a deportation order under section 3(1) of the Immigration Act, 1999,
- (d) a refusal under Article 5 of the Aliens (Amendment) (No. 2) Order, 1999 (S.I. No. 24 of 1999),
- (e) an exclusion order under section 4 of the Immigration Act, 1999,
- (f) a decision by or on behalf of the Minister to refuse an application for refugee status or a recommendation of an Appeal Authority referred to in paragraph 13 of the

document entitled "Procedures for Processing Asylum Claims in Ireland" which, as amended, was laid by the Minister for Justice, Equality and Law Reform before the Houses of the Oireachtas in March 1998, S.5

- (g) a recommendation under section 12 (as amended by section 11(1)(h) of the Immigration Act, 1999) of the Refugee Act, 1996,
- (h) a recommendation of the Refugee Applications Commissioner under section 13 (as amended by section 11(1)(i) of the Immigration Act, 1999) of the Refugee Act, 1996,
- (i) a decision of the Refugee Appeals Tribunal under section 16 (as amended by section 11(1)(k) of the Immigration Act, 1999) of the Refugee Act, 1996,
- (j) a determination of the Commissioner or a decision of the Refugee Appeals Tribunal under section 22 (as amended by section 11(1)(p) of the Immigration Act, 1999) of the Refugee Act, 1996,
- (k) a refusal under section 17 (as amended by section 11(1)(l) of the Immigration Act, 1999) of the Refugee Act, 1996,
- (l) a determination of an officer appointed under section 22(4)(a) of the Refugee Act, 1996,
- (m) a decision of an officer appointed under section 22(4)(b) of the Refugee Act, 1996, or
- (n) a decision under section 21 (as amended by section 11(1)(o) of the Immigration Act, 1999) of the Refugee Act, 1996,

otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (hereafter in this section referred to as "the Order").

(2) An application for leave to apply for judicial review under the Order in respect of any of the matters referred to in *subsection (1)* shall—

- (a) be made within the period of 14 days commencing on the date on which the person was notified of the decision, determination, recommendation, refusal or making of the Order concerned unless the High Court considers that there is good and sufficient reason for extending the period within which the application shall be made, and
 - (b) be made by motion on notice (grounded in the manner specified in the Order in respect of an *ex parte* motion for leave) to the Minister and any other person specified for that purpose by order of the High Court, and such leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the decision, determination, recommendation, refusal or order is invalid or ought to be quashed.
- (3) (a) The determination of the High Court of an application for leave to apply for judicial review as aforesaid or of an application for such judicial review shall be final and no appeal shall lie from the decision of the High Court to

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the Supreme Court in either case except with the leave of the High Court which leave shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(b) This subsection shall not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.

(4) The High Court shall give such priority as it reasonably can, having regard to all the circumstances, to the disposal of proceedings in that Court under this section.

(5) The Superior Court Rules Committee may make rules to facilitate the giving of effect to *subsection (4)*.

(6) References in this section to the Order shall be construed as including references to the Order as amended or re-enacted (with or without modification) by rules of court.

Amendment of
section 8 of
Criminal Law Act,
1976.

6.—Section 8 of the Criminal Law Act, 1976, is hereby amended in subsection (1) by the substitution of the following paragraphs for paragraphs (i) to (k):

“(i) an offence under this Act,

(j) an offence under section 12(1) of the Firearms and Offensive Weapons Act, 1990,

(k) an offence under section 112(2) of the Road Traffic Act, 1961 (substituted by section 3(7) of the Road Traffic (Amendment) Act, 1984),

(l) an offence under *section 2* of the *Illegal Immigrants (Trafficking) Act, 2000*.”.

Entry, search and
seizure.

7.—(1) Where, on the sworn information of a member of the Garda Síochána not below the rank of sergeant, a judge of the District Court is satisfied that there are reasonable grounds for suspecting that evidence of or relating to an offence under *section 2* is to be found at a place specified in the information, the judge may issue a warrant for the search of that place and any persons found at that place.

(2) A warrant issued under this section shall authorise a named member of the Garda Síochána, alone or accompanied by such other members of the Garda Síochána and such other persons as may be necessary—

(a) to enter, within 7 days from the date of the warrant, and if necessary by the use of reasonable force, the place named in the warrant,

(b) to search it and any persons found there, and

(c) to seize anything found there, or anything found in the possession of a person present there at the time of the search, which that member reasonably believes to be evidence of or relating to an offence under *section 2*.

(3) A member of the Garda Síochána acting in accordance with a warrant issued under this section may require any person found at the place where the search is carried out to give the member his or her name and address. S.7

(4) Any person who—

(a) obstructs or attempts to obstruct any member of the Garda Síochána acting in accordance with a warrant issued under *subsection (1)*,

(b) fails or refuses to comply with a requirement under this section, or

(c) gives a name or address which is false or misleading,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or both.

(5) A member of the Garda Síochána may arrest without warrant any person whom the member suspects of having committed an offence under *subsection (4)*.

(6) In this section, “place” includes any dwelling, any building or part of a building and any vehicle, vessel, structure or container used or intended to be used for the carriage of goods by road.

8.—The Schedule to the Bail Act, 1997, is hereby amended by the insertion of the following paragraph after paragraph 27:

Amendment of
Schedule to Bail
Act, 1997.

“27A. Any offence under *section 2* of the *Illegal Immigrants (Trafficking) Act, 2000*.”.

9.—The Refugee Act, 1996, is hereby amended—

Amendment of
Refugee Act, 1996.

(a) in section 9, by the insertion of the following subsection after subsection (4):

“(4A) An applicant shall inform the Commissioner of his or her address and shall inform the Commissioner as soon as possible of any change of address.”,

(b) in section 13(3)(c) (inserted by the Immigration Act, 1999), by the substitution of “15 working days” for “21 days”,

(c) in section 16(3), by the substitution of “13(3)(b)” for “13(2)(b)”,

(d) in the Second Schedule (inserted by the Immigration Act, 1999), by—

(i) the substitution in paragraph 1 of “5 years’ ” for “10 years’”,

(ii) the substitution of the following paragraph for paragraph 2—

“2. (a) The members of the Tribunal shall be appointed by the Minister.

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(b) A person shall not be appointed to be the chairperson unless the Civil Service Commissioners, within the meaning of the Civil Service Commissioners Act, 1956, after holding a competition under section 29 of that Act, have selected him or her for appointment to the position.”,

and

(iii) the substitution of the following paragraph for paragraph 5:

“5. (a) The chairperson shall hold office under a contract of service in writing, containing such terms and conditions (including terms and conditions relating to remuneration, allowances and expenses and superannuation), as the Minister, with the consent of the Minister for Finance, may from time to time determine.

(b) Each ordinary member shall be paid such remuneration and allowances and expenses as the Minister, with the consent of the Minister for Finance, may from time to time determine.”.

Amendment of
Immigration Act,
1999.

10.—The Immigration Act, 1999, is hereby amended—

(a) in section 3—

(i) by the insertion of the following subsection after subsection (1):

“(1A) A person the subject of a deportation order under this section may be detained in accordance with the provisions of this Act for the purpose of ensuring his or her deportation from the State.”,

and

(ii) in subsection (9), by the substitution of the following paragraph for paragraph (a):

“(a) (i) Subject to paragraph (b), where the Minister has made a deportation order under this section, the notice under subsection (3)(b)(ii) may require the person the subject of the deportation order to do any one or more of the following for the purpose of ensuring his or her deportation from the State:

(I) present himself or herself to such member of the Garda Síochána or immigration officer at such date, time and place as may be specified in the notice;

(II) produce any travel document, passport, travel ticket or other document in his or her possession required for the purpose of such deportation to such member of the Garda Síochána or immigration officer at such date, time and place as may be specified in the notice;

- (III) co-operate in any way necessary to enable a member of the Garda Síochána or immigration officer to obtain a travel document, passport, travel ticket or other document required for the purpose of such deportation; S.10
- (IV) reside or remain in a particular district or place in the State pending removal from the State;
- (V) report to a specified Garda Síochána station or immigration officer at specified intervals pending removal from the State;
- (VI) notify such member of the Garda Síochána or immigration officer as may be specified in the notice as soon as possible of any change of address.
- (ii) Where the notice under subsection (3)(b)(i) contains a requirement to do an act specified in subparagraph (i), a member of the Garda Síochána or immigration officer may, if he or she considers it necessary for the purpose of ensuring the deportation of the person concerned from the State, require the person in writing to do any one or more of the acts specified in subparagraph (i), and any such further requirement shall have effect as if it were a requirement in a notice under subsection (3)(b)(ii).
- (iii) A further requirement under subparagraph (ii) shall, where necessary and possible, be given to the person concerned in a language that he or she understands.”
- (b) in section 5, by the substitution of the following subsection for subsection (1):

“(1) Where an immigration officer or a member of the Garda Síochána, with reasonable cause suspects that a person against whom a deportation order is in force—

- (a) has failed to comply with any provision of the order or with a requirement in a notice under section 3(3)(b)(ii),
- (b) intends to leave the State and enter another state without lawful authority,
- (c) has destroyed his or her identity documents or is in possession of forged identity documents, or
- (d) intends to avoid removal from the State,

he or she may arrest him or her without warrant and detain him or her in a prescribed place.”,

and

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(c) in section 6—

(i) by the substitution in paragraph (b) for “to the Minister” of “to the Registration Officer pursuant to Article 11 of the Aliens Order, 1946 (S.R. & O., No. 395 of 1946), or to the Refugee Applications Commissioner pursuant to section 9(4A) of the Refugee Act, 1996, as the case may be”, and

(ii) by the insertion of the following subsection:

“(2) Where a notice under this Act has been sent to a person in accordance with paragraph (b) of the foregoing subsection, the notice shall be deemed to have been duly served on or given to the person on the third day after the day on which it was so sent.”.

Offences by bodies corporate.

11.—(1) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Expenses.

12.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Short title and commencement.

13.—(1) This Act may be cited as the *Illegal Immigrants (Trafficking) Act, 2000.*

(2) This Act shall come into operation on such day or days as, by order or orders made by the Minister, may be fixed therefor either generally or with reference to any particular purpose or provision and different days may be so fixed for different purposes and different provisions.